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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,536	12/12/2003	Donald J. White JR.	7858MD	9705
	7590 07/23/200 R & GAMBLE COMP	EXAMINER		
Global Legal Department - IP			ROBERTS, LEZAH	
Sycamore Building - 4th Floor 299 East Sixth Street		ART UNIT	PAPER NUMBER	
CINCINNATI,	ОН 45202	1612		
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			07/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	Α	TTORNEY DOCKET NO.
10734536	12/12/2003	WHITE ET AL.	7858MD	
		EXAMINER		
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224			LEZAH W. ROBERTS	
			ART UNIT	PAPER

DATE MAILED:

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Commissioner for Patents

20080711

The reply filed on April 7, 2008 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the amendment is NON-RESPONSIVE because it cancels all pending claims drawn to the elected group, which encompasses a composition. See 37 CFR 1.111.

Amended claims and newly submitted claims 1, 2, 5 and 6 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to a method of increasing hydrophilic character to a subject's teeth and oral mucosal surfaces; and decreasing pellicle film thickness. Previously submitted claims were directed to a composition comprising a polymeric surface active agent. If the claims were originally presented, they would be restricted as follows.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, 5 and 6 (as originally filed), drawn to a composition, classified in class 424, subclass 49.
- II. Claims 1, 2, 5 and 6, drawn to a method, classified in class 514, subclass 900 plus.

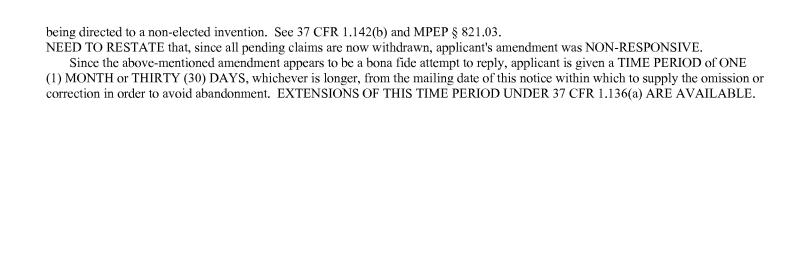
The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the compositions may be used remove plaque from teeth or may be incorporated into a toothpaste for cleaning biofilm off of the teeth.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 2, 5 and 6 are withdrawn from consideration as



/Frederick Krass/ Supervisory Patent Examiner, Art Unit 1612 /Lezah W Roberts/ Examiner, Art Unit 1612

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